



W.P(MD)No.15575 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.15575 of 2018

and

W.M.P.(MD)No.13990 of 2018

The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
No.9F, Jain Thomas Road,
Maharaj Nagar, Tirunelveli.

... Petitioner

Vs.

1.The Assistant Commissioner of Labour,
Office of the Assistant Commissioner of Labour,
Tirunelveli.

2.Perumal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent in P.G.No.427 of 2015 dated 20.12.2016 and quash the same.

For Petitioner : Mr.G.Mohankumar

For R1 : Mr.P.Thambidurai,
Government Advocate

For R2 : No Appearance



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ORDER

Challenge has been made to the order of the 1st respondent dated 20.12.2016, where the petitioner was directed to pay a sum of Rs.97,323/- towards gratuity along with 10% interest to the 2nd respondent.

2.The learned counsel appearing for the petitioner would submit that the 2nd respondent was working as Apprentice Trainee Clerk from 1984 to 1990. He was regularised with effect from 01.11.1990 and retired on 31.03.2011. Therefore, the gratuity amount had been calculated from 01.11.1990 to 31.03.2011 and the same had been paid to him. There is no dispute on that aspect. Admittedly, the petitioner Corporation issued a circular on 19.05.2014, stating that the services rendered in the cadre of Trainee Bill Clerks / Trainee Shop Assistants will be taken into account for the purpose of calculating gratuity and with regard to the retired employees, who have initially worked as Trainee Bill Clerk / Trainee Shop Assistant, the arrears may be claimed and paid to them by calculating their service. Pursuant to which, claiming gratuity for a sum of Rs.88,958/- for the period from 01.03.1984 till 31.10.1990, the 2nd respondent filed a petition before the 1st respondent, who in turn, passed the impugned order dated 20.12.2016.



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3.He would further submit that since the petitioner had voluntarily come forward to pay gratuity, excluding the apprenticeship period from the purview of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act'), that does not mean that they are liable to pay gratuity along with interest. Therefore, without application of mind, the 1st respondent has passed the impugned order.

4.The learned Government Advocate appearing for the 1st respondent would submit that since the petitioner voluntarily made payment of gratuity for the apprenticeship period, now, they cannot come and say that they are not liable to pay interest. Therefore, the 1st respondent has rightly passed the impugned order, hence, there is no interference called for.

5.Though notice was served to the 2nd respondent and his name is printed in the cause list, none appeared for him.

6.I have given due consideration to the submissions made on either side and perused the materials available on record carefully.



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7. Admittedly, the 2nd respondent was working as Apprentice Trainee Clerk from 01.03.1984 till 31.10.1990. As per the Act, the apprentice will not be considered for the purpose of payment of gratuity. At this juncture, it would be appropriate to extract the definition of the 'employee' as defined in the Act herein:-

“(e)"employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

8. A reading of the above definition would show that the apprentice will not come under the purview of the employee for the payment of gratuity. However, based on the circular dated 19.05.2014, which was mentioned hereinabove, the petitioner voluntarily come forward to pay gratuity by including the apprenticeship period also. In the event if there is any retirement, subsequent to the above circular and if there is any delay in paying the gratuity



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amount, no doubt, the petitioner is liable to pay interest, even if there is any delay for payment of gratuity for apprenticeship period.

9.In the present case, the 2nd respondent though was retired on 31.03.2011 and received eligible gratuity amount in time, he made a petition to the 1st respondent for payment of gratuity for the apprenticeship period by referring to the circular dated 19.05.2014.

10.A reading of the above circular shows that it will be applied prospective in nature. As observed above, in the event if there is any delay in payment of gratuity for the apprenticeship period, subsequent to the above circular, certainly, the petitioner is liable to pay interest. As far as the applicability of the circular retrospectively is concerned, this Court is not inclined to venture into the same, since the petitioner themselves come forward to pay gratuity for the apprenticeship period. In the event if the circular was not issued, the question of interest for the delay will not come into picture. Therefore, the petitioner is not liable to pay interest for the delay in making the payment.

11.All these reasons have not been considered by the 1st respondent. Therefore, this Court set asides only the interest portion at the rate of 10% for



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the gratuity amount of Rs.97,323/-. At this stage, the learned counsel for the petitioner submitted that the petitioner deposited a sum of Rs.1,59,199/- (Rupees One Lakh Fifty Nine Thousand One Hundred and Ninety Nine Only). Therefore, the 2nd respondent is permitted to withdraw a sum of Rs.97,323/- (Rupees Ninety Seven Thousand Three Hundred and Twenty Three Only) only and for the said amount, if any interest is accrued, he is permitted to withdraw the same also. As far as the balance amount deposited by the petitioner towards interest ie., Rs.61,876/- (Rupees Sixty One Thousand Eight Hundred and Seventy Six Only) is concerned, the petitioner is entitled to withdraw the same and in the event if any interest is accumulated for the said amount, the same shall also be withdrawn proportionately by the petitioner.

12.This Writ Petition is disposed of accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To
The Assistant Commissioner of Labour,
Office of the Assistant Commissioner of Labour,
Tirunelveli.



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KRISHNAN RAMASAMY, J

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